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Supreme Court, U.S.
FILED

No. — 04-824 DEC 16 2004

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IN THE

Supreme Court of the United States

EX PARTE SOUTHEASTERN RUBBER RECYCLING,
a division of Sunrise Garden Mart, Inc.,

and

STAN SULLIVAN
(In re: Southeastern Rubber Recycling, *et al.* v.
State Department of Public Health, *et al.*)

Petition for a Writ of Certiorari to the Supreme Court of Alabama

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PETITION FOR WRIT OF CERTIORARI

ALVIN T. PRESTWOOD *
TARA S. KNEE
PRESTWOOD & ASSOCIATES, P.C.
350 Adams Avenue
Post Office Box 1910
Montgomery, Alabama 36104-1910
(334) 264-6401

* Counsel of Record

Counsel for the Petitioners

WILSON-EPES PRINTING CO., INC. – (202) 789-0096 – WASHINGTON, D. C. 20001

QUESTIONS PRESENTED FOR REVIEW

Was the Due Process Clause of the Fourteenth Amendment to the United States Constitution violated by the following actions of the state courts:

(1) When a state trial judge, over timely objection, refused to recuse himself after he has indicated opinions about the issues prior to trial and when, coupled with pretrial publicity, he gave at least the appearance of bias?

(2) When a state trial judge, over timely objection, allowed a state administrative agency to apply its governing statutes, rules and regulations in an arbitrary and capricious manner?

PARTIES TO THE PROCEEDING

1. Southeastern Rubber Recycling, a division of Sunrise Garden Mart, Inc. (a Petitioner);
2. Stan Sullivan (a Petitioner);
3. The State of Alabama Department of Public Health (a Respondent);
4. Donald E. Williamson (a Respondent);
5. Andrew W. Adams (a Respondent);
6. Lemuel Burrell (a Respondent); and
7. Kimberly Rice (a Respondent).

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IN THE

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No. ___

EX PARTE SOUTHEASTERN RUBBER RECYCLING,
a division of Sunrise Garden Mart, Inc.,

and

STAN SULLIVAN

(In re: Southeastern Rubber Recycling, *et al.* v.
State Department of Public Health, *et al.*)

Petition for a Writ of Certiorari to the Supreme Court of Alabama

PETITION FOR WRIT OF CERTIORARI

CITATIONS OF REPORTS

There have been no official citations of the opinions and orders of the state courts. The case was first heard in the Circuit Court of Chambers County, Alabama, as no. 99-293. (App. 1a). In the Alabama Court of Civil Appeals, it was cited as no. 2020251 (App. 13a), and in the Supreme Court of Alabama, it was given the no. 1031705. (App. 17a).

STATEMENT OF JURISDICTION

Jurisdiction of this Court over this Petition is posited under the provisions of 28 U.S.C. §1257 and §2104. The date of the judgment or order of the Supreme Court of Alabama sought to be reviewed denying a petition for a writ of certiorari was September 17, 2004. Rule 39(b) of the Alabama Rules of Appellate Procedure prohibits any application to rehear such decisions.

CONSTITUTIONAL PROVISIONS, STATUTES, AND REGULATIONS INVOLVED

1. Section 1 of Amendment XIV to the United States Constitution:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

2. Ala. Code 1975, §22-27-2 (App. 32a-34a).

3. Ala. Code 1975, §22-27-7 (App. 35a-36a).

4. Ala. Code 1975, §6-5-120 (App. 36a).

5. Ala. Code 1975, §6-5-121 (App. 36a).

6. Ala. Code 1975, §41-22-5 (App. 36a-38a).

7. Ala. Code 1975, §41-22-9 (App. 39a).

8.. Ala. Code 1975, §22-40-1-11 (App. 39a-57a).

STATEMENT OF THE CASE

This case was begun by Southeastern Rubber Recycling and Stan Sullivan (hereafter collectively referred to as "SRR") against the State of Alabama Department of Public Health ("ADPH"), a State Agency, the State Health Officer, and several employees of the State Agency in their official capacities. The Respondents will sometimes hereafter be referred to collectively as "ADPH." (C-2).[1]

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[1] References herein beginning with "C-" are to the pages of the trial court's record, while references beginning with "R-" are to pages of the court reporter's transcript.

SRR maintains a used tire collection and disposal facility in Chambers County, Alabama, known as the "Plainview" site. ADPH had ordered the cessation of operations at Plainview, and the removal of the tires at the site, and denied SRR's application for a used tire processing facility permit for the 1999-2000 permit year.

ADPH filed an answer and counterclaim, seeking closure of the Plainview site and enforcement of the cease and desist order. ADPH also sought injunctive relief alleging that the Plainview site was a public nuisance and seeking the removal of the tires there. (C-98).

On August 15, 2002, SRR filed an Amended Complaint, and although ADPH moved to strike the Complaint, that motion was not granted. (C-814).

The trial began on September 23, 2002, and concluded on September 27, 2003. After a pretrial conference was held, SRR filed a motion seeking the recusal of the trial judge (App. 1a), which motion was denied. (App. 2a). Subsequently, the Alabama Court of Civil Appeals (App. 24a) and the Alabama Supreme Court (App. 31a) denied petitions for a writ of mandamus regarding the recusal effort.

The trial court entered a judgement on December 3, 2002, denying all relief requested by SRR and declaring the Plainview site to be a public nuisance, and ordering removal of the tires according to a schedule. (App. 3a-10a). SRR filed a motion to stay the trial court's order, and the trial court modified the order on January 6, 2003, by staying the portion of the order requiring the removal of the tires. (App. 11a-12a).

ADPH has contended that the term "solid waste" under the provisions of Ala. Code 1975, §22-27-2 includes "scrap tires," but tires are not included in the definition of that term contained in the statute. (App. 32a). ADPH has admitted before the State courts that "the statutory licensing authority

[over "scrap tires"] lies with the probate courts throughout the state," and that ADPH "has no authority in regards to the issuance, revocation, or suspension of such licenses."

ADPH has also convinced the courts that the Plainview site is a public nuisance because it contends it is an "unauthorized dump" under Ala. Code 1975, §22-27-4. However, the definition of an "unauthorized dump," found in Ala. Code 1975, 22-27-2(6) only applies to solid waste on property that is not under the control or supervision of any person or agency, or a "solid waste disposal site which does not meet the regulatory provisions of this article." (App. 33a). Here, Plainview was under the control and supervision of SRR, and the agency controlling the disposal of solid wastes, identified as the "department" in §22-27-7 of the Ala. Code of 1975, was the Alabama Department of Environmental Management ("ADEM"). (App. 35a-36a).

Although the term "nuisance" is defined in Ala. Code 1975, §6-5-120 (App. 36a), and a distinction is drawn between public and private nuisances in §6-5-121 (App. 36a), the specific legislative treatment of "scrap tires" in the Scrap Tire Disposal Act (Ala. Code 1975, §22-40-1) (App. 39a), precludes the generalization that ADPH has insisted upon.

In adopting regulations that ADPH is attempting to enforce in this case, it purports to enforce standards laid down in the National Fire Prevention Association Code and the Southern Plumbing Code, and by the Alabama Historical Commission, without having adopted those provisions in its regulatory scheme as required by the Alabama Administrative Procedure Act, Ala. Code 1975, §41-22-9 (App. 39a), rendering those enforcement provisions void under §41-22-5. (App. 36a-38a).

ARGUMENT

(I) *The general intertwined federal and state constitutional considerations*

From the inception of this case, SRR has insisted that the actions taken against it constituted an "abuse of discretion," and that they have been "arbitrary, capricious [and] violative due process." While no specific distinction was drawn between the due process clauses of the state and federal constitutions, in Alabama, such an allegation triggers both state and federal due process inquiries, because the state courts "consider our analysis of the . . . due process issues under the United States Constitution equally applicable to those same issues under the Alabama Constitution." See *Jefferson County v. Braswell*, 407 So. 2d 115, 122 (Ala. 1981). It also has been established that "[t]he Alabama Constitution affords no less protection to its citizens than that afforded by the United States Constitution." *Ford v. State*, 356 So. 2d 720, 722 (Ala. Cr. App. 1978), Cert. denied 356 So. 2d 723 (Ala. 1978). In *Tarter v. James*, 667 F. 2d 964 (11th Cir. 1982), the Eleventh Circuit noted that "[t]here are no state constitutional rights sought to be vindicated which are not also protected by the federal constitution" (Id. p. 966), and observed in that case that "[m]any of the plaintiff's state constitutional challenges are based upon provisions which essentially mirror those upon which the federal constitutional claims are premised."

In any case, the overall purpose of due process protections is to guarantee "a fair trial in a fair tribunal" (*In re Murchison*, 349 U.S. 133, 136 (1955), and such protection was not afforded in this case. (App. 21a; 28a).

It is clear from authoritative decisions of this Court that property interests protectible by the Due Process Clause of the Fourteenth Amendment are created and defined by state law. See, e.g. *Board of Regents v. Roth*, 408 U.S. 564, 577

(1972). Alabama case law has created such an interest in the rights of its citizens to rely upon adherence to established legislative and regulatory provisions. In *Smith v. City of Mobile*, 374 So. 2d 305, 307 (Ala. 1979), the Alabama Supreme Court said:

> "In *Boulder Corp. v. Vann*, [345 So. 2d 272, 275 (Ala. 1977)] this court held that '. . . In exercising its function approving or disapproving any particular subdivision plat, the Commission acts in an administrative capacity, and is bound by any limitations on its authority contained in the legislation authorizing it to act, *as well as* any restrictions contained in its own regulations.'"

(Emphasis is original). The *Boulder Corp.* case was also cited in *Lynnwood Property Owners v. Lands Described*, 359 So. 2d 357, 360 (Ala. 1978), where the Alabama Supreme Court said:

> "To allow the Commission to ignore its own by-laws and regulations with impunity would foster impermissible arbitrariness by our city governments. *The mandates of procedural due process of law prevent such actions.*"

(Emphasis added).

The crux of due process provisions of the Alabama Constitution is to protect individuals from arbitrary and capricious actions of government. *McCollum v. Birmingham Post Co.*, 259 Ala. 88, 65 So. 2d 689 (1953).[2]

In Alabama, actions of an administrative agency taken without observing fixed statutory or regulatory standards is considered to be arbitrary and capricious. See *Pritchett v. Nathan Rodgers Const. & Rlty. Corp.*, 379 So. 2d 545, 548

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[2] This implicates the so-called "substantive" prong of due process principles, as explained by this Court in *Chicago, Burlington and Quincy R.R. Company v. Chicago*, 166 U.S. 226, 234-235 (1897). See also, *Thompson v. Gallagher*, 489 F. 2d 443 (5th Cir. 1973).

(Ala. 1979) (granting or denying sewer connections on a case-by-case basis was acting "arbitrarily and capriciously"). See, also, *Mobile County Gas District v. Mobile Gas Service Corp.*, 284 Ala. 664, 671, 227 So. 2d 565 (1969).

(II). *The recusal issue*[3]

The issue of the appearance of bias was timely raised by SRR, and was ruled upon by the trial judge in advance of the trial. (App. 1a). In denying the motion to recuse, the trial judge never addressed the reasonable person/appearance of bias test, but simply denied that he was biased, while admitting that a discussion "openly about the issues" had occurred at the pretrial conference. (App. 2a). The Petitioners' version of that discussion included statements by the judge that SRR would be required to dispose of tires at a greater rate than bringing tires to the site, that SRR should cut its losses, and that if more tires were deposited on the site than were disposed of, the court would declare the site a dump and put Stan Sullivan in jail. (C-873).

The trial judge also denied having read a highly prejudicial newspaper article about the case, but clearly indicated in the order his awareness of the article. Also, ADPH attorneys supplied a proposed "consent order" directly to the trial

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[3] The fact that SRR sought to review the decision denying recusal through mandamus proceedings in the Alabama appellate courts did not prohibit the consideration of that issue on appeal. Alabama Rules of Appellate Procedure, Rule 21(b), provides:

> "If the [appellate] court is of the opinion that the writ should not be granted, it shall deny the petition."

The writ of mandamus is universally recognized as one of limited scope, and does not qualify as a reason for refusing to revisit issues there raised. See *Biddulph v. Mortham*, 89 F. 3d 1491, 1495, n. 1 (11th Cir. 1996). In Alabama, mandamus is an extraordinary remedy that is also very limited in scope. See *Ex parte Judge Robert Vance, Jr.*, Alabama Supreme Court no. 1030450, October 29, 2004.

court without discussing it with SRR's counsel, and without providing SRR's counsel with sufficient time to respond. (C-896-900).

The Alabama cases and the precedential decisions of this Court are in one accord on recusal. In *Concrete Pipe and Products of California, Inc. v. Construction Laborers Pension Trust*, 508 U.S. 602, 617-18 (1993) (App. 20a; 27a), it was held:

> 'That officers acting in a judicial or quasi-judicial capacity are disqualified by their interest in the controversy to be decided is, of course, the general rule.' *Tumey v. Ohio*, 273 U.S. 510, 522, 71 L. Ed. 749, 47 S. Ct. 437, 50 A.L.R. 1243 (1927). Before one may be deprived of a protected interest, whether in a criminal or civil setting, see *Marshall v. Jerrico, Inc.*, 446 U.S 238, 242 and n.2, 64 L. Ed. 2d 182, 100 S. Ct. 1610 (1980), one is entitled as a matter of due process of law to an adjudicator who is not in a situation 'which would offer a possible temptation to the average man as a judge . . . , which might lead him not to hold the balance nice, clear and true. . . .' *Ward*, supra, at 60, 34 L. Ed. 2d, 267, 93 S. Ct. 80 (quoting Tumey, supra, at 532, 71 L. Ed. 749, 47 S. Ct. 437, 50 A.L.R. 1243). Even appeal and a trial *de novo* will not cure a failure to provide a neutral and detached adjudicator. 409 U.S., at 61, 34 L. Ed. 2d 267, 93 S. Ct. 80.
>
> '[J]ustice', indeed, 'must satisfy the appearance of justice, and this stringent rule may sometimes bar trial [even] by judges who have no actual bias and who would do their very best to weigh the scales of justice equally between contending parties', *Marshall v. Jerrico, Inc. supra*, at 243, 64 L. Ed. 2d 182, 100 S. Ct. 1610 (citations and internal quotation marks omitted).
>
> . . .
>
> Where an initial determination is made by a party acting in an enforcement capacity, due process may be satisfied by providing for a neutral adjudicator to 'conduct a *de*

> *novo* review of all factual and legal issues. Cf. id., at 245, 64 L. Ed. 2d 182,100 S. Ct. 1610; see also *Id.*, at 247-248, and n 9, 64 L. Ed 2d 182, 100 S. Ct. 1610; cf. *Withrow v. Larkin*, 421 U.S. 35, 58, 43 L. Ed. 2d 712, 95 5. Ct. 1456 (1975) ('Clearly, if the initial view of the facts based on the evidence derived from nonadversarial processes as a practical or legal matter foreclosed fair and effective consideration at a subsequent adversary hearing leading to ultimate decision, a substantial due process question would be raised).

This Court has previously held that another member of the Alabama Judiciary should have recused himself because of the appearance of bias in the case of *Aetna Life Insurance Co. v. Lavoie*, 475 U.S. 813 (1986).

In *Ex parte Thomas E. Bryant*, 682 So. 2d 39 (Ala. 1996), The Alabama Supreme Court held that the judge should have recused himself and the refusal to so do was reversed. At 682 So. 2d 41, the Supreme Court said:

> "The standard for recusal is an objective one: whether a reasonable person knowing everything that the judge knows would have a 'reasonable basis for questioning the judge's impartiality.' The focus of our inquiry, therefore, is not whether a particular judge is or is not biased toward the petitioner; *The focus is instead on whether a reasonable person would perceive potential bias or lack of impartiality* on the part of the judge in question.

(Citations omitted). (Emphasis added).

In *Morgan County Commission v. Powell*, 292 Ala. 300, 312, 293 So. 2d 830 (Ala. 1974), the reasoning behind the objective standard of "reasonable person/appearance of impropriety" was stated:

> "Paramount to any system of justice is the total impartiality of the court which sits in judgment of any controversy. The appearance of fairness is virtually as important as is fairness itself."

The *Bryant* case, *supra*, held that a court must determine if the extraordinary facts underlying the case against (SRR) and the peculiar nature of the case. . . . "are such that it is reasonable for a party, for members of the public or for counsel to question the impartiality" of a circuit judge. The issue is not whether any judge is actually biased. As in this case, in *Bryant* the action had been the subject of intense media coverage.

Crowell v. May, 676 So. 2d 941, (Ala. Civ. App. 1996) is also a case enunciating the appearance of impropriety rule. There, a jury verdict was returned for a member of the family close to the court, and the trial judge set aside the verdict and recused himself from retrial. In quoting the Supreme Court of Alabama, *Ex parte Duncan*, 638 So. 2d 1332, 1334 (Ala. 1999), the court stated,

> "[R]ecusal is required when facts are shown which make it reasonable for members of the public or a party or counsel opposed to question impartiality of the judge. . . The question is not whether the judge was impartial in fact, but whether another person, knowing all the circumstances might reasonably question the judge's impartiality-whether there is an appearance of impropriety."

(Citations omitted).

In Alabama, circuit judges must be elected and re-elected by a vote of its citizens, and the pre-trial publicity clearly had the presumptive effect of influencing this jurist. It is clear in this case that there was, at a minimum, the appearance of bias.

(III) *The conflicting statutory provisions*

While the courts have attempted to apply the statutes regarding solid waste (App. 32a), nuisances (App. 36a), and "unauthorized dumps" (App. 33a) to the Plainview site, they have only given lip service to the statute specifically

addressing "scrap tires." None of the former three statutes purport to address the issue of used tire storage or disposal, while the Scrap Tire Disposal Act treats those issues with specificity and head-on. (App. 39a-57a).

It was arbitrary and unreasonable for the ADPH to pursue the enforcement of general statutes in this case as to "scrap tires," and for the courts to sanction such pursuit. In Alabama, "where two statutes are related to the same subject and embrace the same matter, a specific or particular provision is controlling over a general provision." *Baldwin County v. Jenkins*, 494 So. 2d 584, 588 (Ala. 1986). See also, *Gober v. Alabama Department of Corrections*, 871 So. 2d 838, 842 (Ala. Cr. App. 2003), Cert. denied (2003); *Pool v. State*, 570 So. 2d 1260, 1262 (Ala. Cr. App. 1990).

Among the many other errors committed by the trial court, it went astray in the case when it allowed ADPH to attempt to coerce the removal of tires from the Plainview site, when the responsibility for control over the disposal of solid waste lies exclusively within the authority of another agency, ADEM. (App.35a-36a). See *Ex parte Lauderdale County*, 565 So. 2d 623 (Ala. 1990), where similar conduct is condemned. Another serious mistake occurred when the trial court allowed ADPH to apply standards adopted from other organizations found in the National Fire Prevention Code, the Southern Plumbing Code, and from the Alabama Historical Commission. None of those standards were properly adopted by ADPH as a part of its regulations, and could not be used against SRR under the provisions of the Alabama Administrative Procedure Act. (App.36a-39a).

During the course of considering the permitting of SRR's facility, ADPH changed its rules regarding the requirements that it would impose, including the location of bathroom facilities and the permissible volumes of tire inventories. Such inconsistency constitutes arbitrary actions, and cannot

be condoned under due process principles. See *Mobile County Gas District v. Mobile Gas Service Corp.*, 284 Ala. 664, 671, 227 So. 2d 565 (1969). See, also *Hartford Healthcare, Inc. v. Williams*, 751 So. 2d 16 (Ala. Civ. App. 1999).

When a governmental agency seeks to invade an area of protected freedoms, or engages in restricting the use of private property, great caution is required because of the imminent danger of discriminatory enforcement. See, *State of Alabama v. Clayton*, 492 So. 2d 665, 667 (Ala. Crim. App. 1986) where the court said:

> "While it has been recognized that the preservation of public health is one of the prime duties of the State...and thus the enactment of enforcement of necessary and reasonable health laws and regulations is legitimate exercise of police power inherent in the state. . . . When the validity of any health regulation is questioned the test adhered to by the courts is whether the regulation has some actual or reasonable relation to the maintenance and promotion of the public health, and whether health is in fact the end sought to be attained. *State ex rel. Furmon v. Searcy*, 225 So. 2d 430, 433 (Fla. Dist. Ct. App. 1969)," (Emphasis in original).

See, also *Dolan v. City of Tigard*, 512 U.S. 374 (1994) (requiring an "essential nexus" between a legitimate state interest and conditions it imposes).

In *State of Alabama v. Clayton, supra* the court held that the standard to be applied to the constitutional implications of statutes promoting public health is one of "reasonableness," and that the "unauthorized dump" prohibition was intended to address the "uncontrolled and unsupervised" dumping of solid waste.[4] Even if the issues in this case were controlled by the

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[4] While it is clear that Plainview site was not "uncontrolled and unsupervised," it also was not in violation of the last sentence of §22-27-2(6) defining an "unauthorized dump," because it met the regulatory provisions of ADEM, the department responsible for the disposal of solid wastes. (App.33a).

statutory provisions as to "solid wastes," "nuisances," or "unauthorized dumps," there has been no showing that SRR's operation at Plainview actually involved a substantial risk to public health. Some of the evidence in that regard was provided by ADPH officials, whose testimony included the following:

A. Burell admitted that, at time of trial, not at the time the lawsuit was filed, SRR site at Plainview had not created an environmental problem. (R-28).

B. A bathroom had not been installed on site, a requirement that was imposed after a permit had been issued. This requirement was not in the original plan but was imposed later. (R-51-52).

C. Until March 2002 (approximate date of the arrival of the West Nile Virus issue) the witness Adams of DPH had not received a complaint concerning the SRR Plainview tire site. (R-151).

D. DPH officials had done nothing to determine if mosquitoes on site carry diseases. (R-154). They opined that mosquitoes were a vector and no more needed to be known. (R-155).

E. Adams also complained of berms, ground supply of water, no bathroom, and no market for recycled tires. (R-163).

Much of ADPH's complaints about Plainview bears no substantial relation to the public health. (See R-180). While mosquito control is related to public health, entomologist Elmer Gray, the only expert to testify at the trial, pointed out that a complete eradication of the mosquito population is impossible. (R-103-130). He also testified that the cost of complete eradication by using the large amount of insecticides necessary to do so would not be conducive of environmental quality. (R-102). This expert also confirmed that the mosquitoes at Plainview had a limited range, and that such mosquitoes presented only a limited problem because of the distances from Plainview to residences and to a school. (R-108).

Because of the convergence of the statutory provisions examined in this case, the Alabama appellate courts should have concluded that the Plainview site was not governed by statutes relating to nuisances, solid wastes, or unauthorized dumps, since the Scrap Tire Disposal Act dealt specifically with the used tire issue. Even if tires were considered to constitute "solid wastes," the disposal thereof is under the supervision of ADEM, and not ADPH, and there is no suggestion that SRR is not in compliance with ADEM's standards. Since Plainview is clearly not uncontrolled or unsupervised, and since there are no allegations that it is in noncompliance with ADEM's rules, it cannot be considered as an unauthorized dump.

CONCLUSION

Considering all of the statutory provisions and reviewing all of the evidence, the decisions made by ADPH and endorsed by the Alabama courts were arbitrary and capricious, and should be vacated. Clearly, the "fair trial in a fair tribunal" envisioned by Justice Black in the case of *In re Murchison, supra*, was not provided to these Petitioners in this instance. For all the forgoing reasons, it is respectfully submitted that this Petition for a Writ of Certiorari should be granted, and that the Writ of Certiorari should issue.

Respectfully submitted,

ALVIN T. PRESTWOOD *
TARA S. KNEE
PRESTWOOD & ASSOCIATES, P.C.
350 Adams Avenue
Post Office Box 1910
Montgomery, Alabama 36104-1910
(334) 264-6401

Counsel for the Petitioners

APPENDICES

APPENDIX A

IN THE CIRCUIT COURT OF CHAMBERS COUNTY, ALABAMA

[Filed Aug. 28, 2002]

Civil Action No. CV 1999-293

SOUTHEASTERN RUBBER RECYCLING, INC. and STAN SULLIVAN,

Plaintiffs,

vs.

STATE OF ALABAMA DEPARTMENT OF PUBLIC HEALTH, *ET AL.*,

Defendants.

ORDER

Plaintiffs have filed two motions in the above–styled cause. One of those motions requests the undersigned judge to recuse himself from the trial of this action. The other motions [sic] requests the court to compel a witness to answer certain questions which were posed at deposition.

In regard to the motion for recusal the plaintiffs have attached a copy of the LaFayette Sun which contains an article relating to the Southeastern Rubber sites and to this litigation. Plaintiffs wrongly assume that the court has seen this article. In fact, in order to insulate himself the court has only considered the allegations contained in the motion and has not read the article. The other allegations in the motion to recuse are speculative and have no basis in fact. This court has not pre-judged this case in any manner. However, at a pre-trial conference the attorneys and counsel talked frankly

and openly about the issues in this action and the possibility of a pre-trial resolution. Therefore, the court is of the opinion that the motion to recuse is due to be and is hereby denied.

The court has considered the motion to compel and has read the certified questions. In the final analysis the witness was asked to enumerate any other violations of rules claimed by the State. After considerable discussion between the attorneys the witness said that she that she would have to look at a report. Counsel for plaintiffs did not want her to refer to the reports but instead wanted her to testify by her memory. The court is of the opinion that the witness was entitled to refresh her memory from looking at reports. Consequently, the court is of the opinion that the motion to compel is due to be and hereby is denied.

The State has filed a motion for a preliminary injunction pending trial. At the present time the undersigned judge is engaged in the second week of a jury term in Macon County. Monday September 2, 2002, is Labor Day. Extensive non-jury dockets are set for the balance of that week. The following Monday this court will preside over the Dadeville Fall Civil Jury Term commences and will continue for a two week period. One of the attorneys for the plaintiffs has a number of cases on that docket. Trial of this action is due to commence on Monday September 23, 2002. The court has previously denied a motion to continue this action. Therefore, there is no time to set a hearing on the motion for preliminary injunction. Therefore, injunctive relief is denied.

A copy of this Order shall be sent to counsel of record.

Done this the 28th day of August, 2002.

/s/ Howard F. Bryan
Circuit Judge

APPENDIX B

IN THE CIRCUIT COURT OF CHAMBERS COUNTY, ALABAMA

[Filed Dec. 3, 2002]

Civil Action No. CV 99-293

SOUTHEASTERN RUBBER RECYCLING, *et al.*,
Petitioners,

vs.

STATE OF ALABAMA DEPARTMENT OF PUBLIC HEALTH, *et al.*,
Respondents.

ORDER

Southeastern Rubber Recycling, Inc., which is now Southeastern Rubber Recycling, a division of Sunrise Garden Mart, Inc. (hereinafter SRR), obtained a Solid Waste Processing Facility Permit for a site in the Plainview School Community in Chambers County. The first such permit introduced into evidence was issued on September 25, 1995. The date of expiration was September 30, 1996. The individual named on that permit was Mike R. Licata. At some point during that permit year Charles Stanton Sullivan, one of the petitioners, obtained full ownership of SRR. He is currently the sole stockholder. Yearly permits were granted thereafter until 1999 when SRR's permit was not renewed. The permits allowed SRR to process used tires. The instant action was commenced by SRR in an effort to compel the issuance of a permit in 1999. The Alabama Department of Public Health (hereinafter ADPH) answered and filed a counterclaim alleging that the Plainview site is a public health nuisance that is due to be abated.

Prior to trial ADPH made a motion to dismiss petitioners complaint as being moot since the permit year initially at issue has passed. Regardless of whether the original action is moot, the bedrock issues remain. If ADPH is correct in its' assertion that the SRR site at Plainview is a public nuisance then no permit can be granted for that site to be a tire processing facility. If it is not a public health nuisance then SRR would be entitled to make application for a new permit. The issuance of that permit would be governed by applicable statutes and regulations.

As stated above SRR is supposed to be a used tire processing facility. As such SRR receives used tires from various sources. Upon arrival at the SRR facility tires are supposed to be sorted. Usable tires are to be taken to another site for re-sale. Unusable tires are further sorted. The tires are due to be split and piled in a manner which prevents the accumulation of rain water. Ultimately, the split tires are to be removed to a final place of disposal. Over the years SRR has amassed tires at the Plainview site. SRR has removed used marketable tires to another site in the Ridge Grove Community. That site is the subject of separate litigation and will be discussed infra.

SRR has had a history of conflict with ADPH. Prior to the re-issuance of annual permits an inspection was performed. Each inspection resulted in a report which listed deficiencies. SRR responded to each report and stated the remedial action which would be taken. The deficiencies were basically consistent from year to year. The proposed remedial measures vary from year to year, however, it is clear that SRR did not comply with its' own suggested remedial actions. The conflict came to a head when ADPH refused to renew SRR's permit.

Very broadly stated, ADPH's concerns are that there is no effective mosquito control on the premises, there is no effective fire control, vegetation has been allowed to grow

close to, into, and over the tire piles, there is not an adequate berm to prevent run off in the event of a fire, there is generally inadequate fire protection, there are no restroom facilities on site and that there is no telephone on the premises. In the scheme of things the lack of restroom facilities and the absence of a telephone are not of great concern to the court.

At the very outset it should be noted that the court, at the request of ADPH and without objection by SRR, viewed the Plainview facility as well as the Ridge Grove site. The court's observations will be included in a discussion of each of the above-stated areas.

Mr. Sullivan testified that about three thousand tires are being brought on to the Plainview site each week. Aerial photographs confirm that the tire piles have grown steadily and significantly. While viewing the premises the court observed an employee of SRR unloading whole tires from an enclosed van. The tires were being placed on a pile located on the other side of the power line right of way from the main body of tires. The court also observed a truck pulling a small open trailer loaded with whole tires coming on to the premises. Mr. Sullivan testified that no tires had been split since the year 2000. That testimony was uncontradicted and is obviously true. The tire splitter is located in between piles of split tires and is not accessible for splitting tires. Furthermore, there is significant vegetation around the splitter. Mr. Sullivan testified that there were no tires located under the power lines. That testimony was accurate. However the tire piles are very close to the power line right of way. The piles of whole tires are significantly larger than the piles of split tires.

It is very clear that no tires are being processed in any manner. Whole tires are being piled up in extraordinary numbers and no tires, either split or whole, are being removed from the site with the exception of those tires which may have been taken to Ridge Grove.

A central issue in this case concerns mosquitos and mosquito control. A great deal of testimony was presented concerning the species of mosquitos present at the Plainview site and whether that species is a vector for West Nile Virus. While that testimony was interesting it was basically immaterial. Mosquito control has always been a public health concern. It is true beyond any doubt that mosquitos are vectors for any number of diseases. When SRR was issued its' first permit mosquito control was a public health concern. At that time West. Nile Virus was not recognized as a problem Alabama. Therefore, the questions in this case are not whether the Asian Tiger mosquito is a vector for West Nile Virus but whether there is an unacceptable mosquito population at the Plainview site and whether adequate measures are being used to combat the mosquitos there. An expert testified for SRR that the number of mosquitos was not excessive and that if SRR followed his plan of control the mosquitos would be held to an acceptable number. The court's view of the premises was on a Friday morning in early October. The sky was overcast and the temperature was in the upper sixties. At the time mosquitos were noticeably swarming. There were veritable clouds of mosquitos. It is uncontroverted that there has never been any mosquito control performed by a professional company. The mosquito control measures mentioned by the expert may have been effective at the time he was present, but at the time of the view the level of mosquitos was significant and was consistent with other testimony. Consequently, the court is satisfied that there is inadequate mosquito control and that any control measures which may have been taken were not performed by a professional company as is required by ADPH.

In regard to the Ridge Grove site, the court went to that site and viewed the entire site. It is undisputed that SRR has never had any sort of permit for the Ridge Grove site. That site consists of an abandoned house near a public highway and a fairly extensive wooded area behind the house. The house

is located across from the Ridge Grove Volunteer Fire Department. Whole tires are stacked fairly neatly around the house and on the front porch. There are also stacks of whole tires throughout the wooded area. There is absolutely no sign of any commercial activity in regard to these tires. No one was on premises to sell tires and there are no signs to indicate that tires are for sale. While these tires are neatly stacked it would appear that this site is an illegal dump. As stated above, the Ridge Grove site is not a part of this litigation and this Order cannot require abatement of the public health nuisance which has been created in Ridge Grove.

Mr. Sullivan testified that the vegetation at the Plainview site was under control. Photographs introduced into evidence by SRR seem to support that testimony. Photographs introduced into evidence by ADPH seem to support the contrary. The view by the court revealed that tree saplings are amongst the tires and that there is vegetation near and on the tire piles. The only partially clear area is where the tire piles abut the power line easement. There can be no question that vegetation is out of control.

Mr. Sullivan testified that a two hundred plus gallon water tank was on premises most of the time for fire control. Regardless of whether the tank is present or not the tire piles are so massive that an undetected fire could easily spread to the point to where two hundred to two hundred fifty gallons of water would not be effective. In connection with fire control and fire in general, Mr. Sullivan testified that he had constructed an adequate berm to prevent run off in the case of a fire. There is no evidence of a berm along the power line right of way and vegetation in other areas conceals the existence vel non of a berm. To say that fire control is inadequate is understatement.

Due to all of the above the court is of the opinion that the Plainview site is not even remotely in conformity with the appropriate statutes and rules which apply to tire processing

facilities. The evidence confirms that regardless of the fact that SRR calls the Plainview site a tire processing facility it is in reality a tire dump. As such the Plainview site is a public health nuisance and is due to be abated.

Having ruled the Plainview site to be a public health nuisance the court must concern itself with an equitable remedy. This site was not created in its' present state over night and it cannot be reclaimed over night. All of the testimony in this case was that used tires are an increasing problem. Part of the testimony was that Americans produce one and a half used tires per person per year. Therefore SRR is going to have difficulty in removing an estimated six hundred thousand tires from this site. It must be noted and stressed that SRR has contributed to its own problems by continuing to accept approximately three thousand tires per week since the time of the initial cease and desist order. SRR has received compensation for each tire received,

It is Therefore Ordered, Adjudged, and Decreed that:

(1) Petitioners are denied all relief requested.

(2) The site which is the subject matter of this litigation is declared to be an unauthorized tire dump and is therefore found to be a public health nuisance which is due to be abated,

(3) Immediately upon distribution of this Order by the Circuit Clerk to counsel of record SRR is enjoined from, and shall cease and desist from taking any tires on to the Plainview site.

(4) Within forty-five (45) days of the date of the filing of this Order SRR shall commence removal of all tires, both whole and split, from the site at the rate of no less than five thousand (5,000) tires per week. Those tires shall be taken to an approved site within the State of Alabama or to a site

outside of the State of Alabama. SRR shall submit the location of the disposal site or sites to ADPH and to this court.

(5) Commencing instanter and continuing until all tires are removed from the site SRR shall:

(A) Commence an aggressive mosquito control program with a professional pest control company or organization. SRR shall submit copies of any contract or contracts to ADPH. Further, SRR or the company employed to provide mosquito control shall submit the mosquito control plan to ADPH.

(B) Remove all vegetation from the tire piles and from an area of one hundred (100) yards surrounding the tire piles.

(C) Create an adequate and recognizable berm around the tire piles to contain run off in the event of a fire.

(D) Maintain the existing water tank on premises. The tank may be used in vegetation control but it must be filled with water when it is not being used for vegetation control

(6) ADPH is authorized and directed to inspect the site at such times as it feels appropriate. SRR shall not impede or interfere in any way with any inspection. Those persons inspecting shall not be harassed in any manner by SRR or any person connected with SRR. The inspections are intended, among other things, to monitor compliance with this Order. Any attempt to frustrate inspection shall be considered to be a contempt of court.

(7) In the event that SRR fails or refuses to abide by the terms of this Order, ADPH is authorized to abate this nuisance in a reasonable manner. The costs of such abatement shall be born by the petitioners. All remedies shall be available to recover said costs. In addition any costs of abatement shall be considered as a lien upon any asset of petitioners whether real or personal.

(8) Each party shall bear their own costs of court.

A copy of this Order shall be sent to counsel of record.

Done this the 3rd day of December, 2002.

/s/ Howard F. Bryan
Circuit Judge

APPENDIX C

IN THE CIRCUIT COURT OF CHAMBERS COUNTY, ALABAMA

[Filed Jan 6, 2003]

Civil Action No. CV 1999-293

SOUTHEASTERN RUBBER RECYCLING, INC. and STAN SULLIVAN,

Plaintiffs,

vs.

STATE OF ALABAMA DEPARTMENT OF PUBLIC HEALTH, *ET AL.*,

Defendants.

ORDER

Plaintiffs have filed a motion for stay of enforcement of the court's final order in this case. Plaintiffs previously filed a motion for new trial which was denied. This action is being appealed to the Alabama Court of Civil Appeals.

The final order in this case found the plaintiffs to be operating an illegal tire dump. The order enjoined the plaintiffs from taking any additional tires on to the site and ordered certain remedial measures. Those remedial measures include removing tires from the site.

The court is of the opinion that plaintiffs should not be allowed to take any additional tires on the site. The court is also satisfied that certain remedial measures should be enforced. Specifically the court is of the opinion that vegetation should be removed from all tire piles and for the

radius around the tire piles specified in the final order. The court is also satisfied that the provisions of the order concerning mosquito eradication and control should remain in place. However, the court is satisfied that the portion of the order requiring the plaintiffs to remove tires from the site should be stayed pending appeal.

It is Therefore Ordered, Adjudged and Decreed that plaintiffs' motion for stay is granted in part and is denied in part. The portion of the order requiring removal of tires from the site shall be stayed pending action by the appellate court. All other provisions of the order shall remain in full force and effect.

A copy of this Order shall be sent to counsel of record.

Done this the 6th day of January, 2003.

/s/ Howard F. Bryan
Circuit Judge

APPENDIX D

THE COURT OF CIVIL APPEALS OF ALABAMA

[Filed Jan 29, 2003]

January 28, 2003

RE: 2020251

Southeastern Rubber Recycling, a division of Sunrise Garden Mart, Inc., ("SRR"), and Stan Sullivan v. State of Alabama Department of Public Health, and Donald Williamson, Andrew W. Adams, Lemeul Burrell, and Kimberly Rice, all sued in official capacities (Appeal from Chambers County Circuit Court: CV 99-293).

You are hereby notified that the following action was taken in the above cause by the Court of Civil Appeals:

Appellants' motion for stay and supplemental motions for stay are denied. See Rule 8(a) (3) and 8(b), Ala. R. App. P.

/s/ John H. Wilkerson, Jr.
JOHN H. WILKERSON, JR., Clerk
Court of Civil Appeals

Court of Civil Appeals
300 Dexter Avenue
Montgomery, AL 36104-3741
(334) 242-4095

APPENDIX E

STATE OF ALABAMA
COURT OF CIVIL APPEALS

John H. Wilkerson, Jr.
Clerk

[seal]

300 Dexter Avenue
Montgomery, AL
36104-3741

Ruby Crowe
Assistant Clerk

February 25, 2003

Phone (334)242-4093
Fax (334) 242-4017

2020251

Southeastern Rubber Recycling, a division of Sunrise Garden Mart, Inc., ("SRR"), and Stan Sullivan v. State of Alabama Department of Public Health, and Donald Williamson, Andrew W. Adams, Lemeul Burrell, and Kimberly Rice, all sued in official capacities (Appeal from Chambers Circuit Court: CV 99-293).

You are hereby notified that the following action was taken in the above cause, by the Court of Civil Appeals:

Appellant's Renewed Motion for Stay of Enforcement of Court's Judgment DENIED.

/s/ John H. Wilkerson, Jr.
JOHN H. WILKERSON, JR.
Clerk, Court of Civil Appeals

APPENDIX F

STATE OF ALABAMA—JUDICIAL DEPARTMENT
THE COURT OF CIVIL APPEALS
OCTOBER TERM, 2003-2004

[Filed May 14, 2004]

2020251

SOUTHEASTERN RUBBER RECYCLING *ET AL.*

v.

STATE DEPARTMENT OF PUBLIC HEALTH *ET. AL.*

Appeal from Chambers Circuit Court (CV-99-293).

PITTMAN, Judge.

AFFIRMED. NO OPINION.

See Rule 53(a) (1) and (a) (2) (F), Ala. R. App. P.; Ala. Code 1975, §§ 6-5-120, 6-5-121, 22-10-1(7), & 22-27-7; *Ex parte Monsanto Co.*, 862 So. 2d 595, 631-32 (Ala. 2003); *Ex parte Little*, 837 So. 2d 822, 825 (Ala. 2002); *Hilliard v., City of Huntsville Elec. Util. Bd.*,, 599 So. 2d 1108, 1112 (Ala. 1992); *Jones v. Clausell*, 859 So. 2d 1134, 1136 (Ala. Civ. App. 2002); and *Ex parte Dixon*, 841 So. 2d 1273, 1278 (Ala. Civ. App. 2002).

Yates, P.J., and Crawley, Thompson, and Murdock, JJ., concur.

APPENDIX G

STATE OF ALABAMA
COURT OF CIVIL APPEALS

John H. Wilkerson, Jr.
Clerk

[seal]

300 Dexter Avenue
Montgomery, AL
36104-3741

Ruby Crowe
Assistant Clerk

July 23, 2004

Phone (334)242-4093
Fax (334) 242-4017

2020251

SOUTHEASTERN RUBBER RECYCLING *ET AL.*

v.

STATE DEPARTMENT OF PUBLIC HEALTH *ET. AL.*

(Appeal from Chambers Circuit Court: CV-99-293).

You are hereby notified that the following action was taken in the above cause, by the Court of Civil Appeals:

Application for Rehearing Overruled. No opinion written on rehearing.

/s/ John H. Wilkerson, Jr.
JOHN H. WILKERSON, JR.
Clerk, Court of Civil Appeals

APPENDIX H

IN THE SUPREME COURT OF ALABAMA

(LOGO)

September 17, 2004

1031705

Ex parte Southeastern Rubber Recycling et al. PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CIVIL APPEALS (In re: Southeastern Rubber Recycling et al. v. State Department of Public Health et al.) (Chambers Circuit Court: CV 99-293; Civil Appeals 2020251).

CERTIFICATE OF JUDGMENT

Writ Denied

The above cause having been duly submitted, IT IS CONSIDERED AND ORDERED that the petition for writ of certiorari is denied.

Writ Denied - No Opinion

HOUSTON, J., - Nabers, C.J., and Lyons, Johnstone, and Woodall, JJ., concur,

I Robert G. Esdale, Sr., as Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing is a full, true and correct copy of the instrument(s) herewith set out as same appear(s) of record in said Court.

Witness my hand this 17th day of September, 2004.

/s/ Robert G. Esdale, Sr.
Clerk, Supreme Court of Alabama

APPENDIX I

IN THE ALABAMA COURT OF CIVIL APPEALS

CASE NO. 2011234

In Re: STANTON SULLIVAN, *et al.*

PETITION FOR A WRIT OF MANDAMUS
REGARDING CIVIL ACTION NO CV-99-293
PENDING IN THE CIRCUIT COURT OF
CHAMBERS COUNTY, ALABAMA

ALVIN T. PRESTWOOD
PRESTWOOD & DICKEY L.L.C.
350 ADAMS AVENUE
POST OFFICE BOX 1910
MONTGOMERY, AL 36102
TELEPHONE: (334) 264-6401
FACSIMILE: (334) 834-4954

PETITION FOR A WRIT OF MANDAMUS

Pursuant to Rule 21(a) of the Alabama Rules of Appellate Procedure, the Petitioners, Stanton Sullivan and Sunrise Garden Mart, Inc., d/b/a Southeast Rubber Recycling ("SRR"), come now and respectfully seek from this Court the issuance of its Writ of Mandamus, directed to the Respondent, Honorable Howard F. Bryan, Circuit Judge of the Circuit Court of Chambers County, requiring him to recuse himself from presiding over any hearings involving the Petitioners in the case of *Southeastern Rubber Recycling, Inc. and Stan Sullivan*, Case No. 99-293, now pending in the Circuit Court of Chambers County, Alabama, and to cause said case to be

transferred form [sic] the Circuit Court of Chambers County for trial. The issues involved are whether this Court will allow a circuit court to proceed to preside over a trial in the face of overwhelming evidence that the Petitioners are likely to be deprived of the benefits of a fair trial.

The facts necessary to understand the petition are as follows:

1. The Petitioners operate a used tire recycling business at two locations in Chambers County, Alabama. Under threat of closure and penalties, the Petitioners sought judicial relief against the Alabama State Department of Public Health in Case No. 99-293.

2. The Respondent Howard F. Bryan is a duly elected judge of the Circuit Court of Chambers County, who was assigned to preside over Case No. 99-293. In the course of the proceedings in Case No. 99-293, the Respondent Judge Bryan has made statements leading the Petitioners to believe that he may have predecided the issues in the case against them.

3. There has been significant newspaper and television publicity in and around the Chambers County area about the Petitioner's facilities, and about the dangers of breeding mosquitoes at said facilities. (See Tab A, attached hereto). The Petitioners are informed and believe, and upon such information and belief aver, that a community meeting or meetings have been scheduled and held in Chambers County, aimed at making people fear that mosquitos at the recycling locations pose a threat to the spread of disease commonly referred to as the "West Nile Virus". The Petitioners are informed and believe that counsel for the Respondents has participated in one or more of such meetings.

4. There is, in reality, no danger of the spread of the disease known as the "West Nile Virus" because of the Petitioners recycling locations. (See Tab B, attached).

5. The Respondent, Judge Howard F. Bryan, is an elected official in the judicial circuit encompassing Chambers County, and his ability to continue serving as such depends upon re-election to his office by vote of the public electors. Because of the significant publicity received in and around Chambers County about the case, Judge Bryan will be seen as being subjected by public pressure to rule against these Petitioners. Cases should not be tried in forums and before judges when there is a substantial question about bias, even though no actual bias may exist. The U.S. Supreme Court in *Concrete Pipe and Products of California Inc. v. Construction Laborers Pension Trust*, 508 U.S. 602, 617-18, (1993) said:

> "That officers acting in a judicial or quasi-judicial capacity are disqualified by their interest in the controversy to be decided is, of course, the general rule" *Tumey v. Ohio*, 273 U.S. 510, 522, 71 L. Ed. 749, 47 5. Ct. 437, 50 A.L.R. 1243 (1927). Before one may be deprived of a protected interest, whether in a criminal or civil setting, See *Marshall v. Jerrico, Inc.*, 446 U.S. 238, 242 and n 2, 64 L. Ed. 2d 182, 100 S. Ct. 1610 (1980), one is entitled as a matter of due process of law to an adjudicator who is not in a situation "which would offer a possible temptation to the average man as a judge . . . which might lead him not to hold the balance nice, clear and true. . ." *Ward*, supra, at 60, (quoting *Tumey*, supra, at 532). Even appeal and a *trial de novo* will not cure a failure to provide a neutral and detached adjudicator.
>
> "[J]ustice", indeed, "must satisfy the appearance of justice, and this stringent rule may sometimes bar trial [even] by judges who have no actual bias and who would do their very best to weight the scales of justice equally between contending parties." *Marshall v. Jerrico, Inc.* supra, at 243."

6. If Case No. 99-293, is allowed to be tried in Chambers County and before Judge Bryan, the obvious public impression will be that the Petitioners were deprived of a "fair trial in a fair tribunal", a basic right guaranteed by due process principles. See *In re Murchison*, 349 U.S. 133, 136 (1995) where the court said:

> "A fair trial in a fair tribunal is a basic requirement of due process. Fairness of course requires an absence of actual bias in the trial of cases. But our system of law has always endeavored to prevent even the probability of unfairness. To this end no man can be a judge in his own case and no man is permitted to try cases where he has an interest in the outcome. That interest cannot be defined with precision. Circumstances and relationships must be considered. This Court has said, however, that 'every procedure which would offer a possible temptation to the average man as a judge . . . not to hold the balance nice, clear and true between the State and the accused, denies the latter due process of law.' *Tumey v. Ohio*, 273 U.S. 510, 532, 71 L ed 749, 758, 47 S. Ct, 437, 50 ALR 1243. Such a stringent rule may sometimes bar trial by judges who have no actual bias and who would do their very best to weigh the scales of justice equally between contending parties. But to perform its high function in the best way 'justice must satisfy the appearance of justice.' *Offutt v. United States*, 348 US 11, 99 L ed 11, 75 S Ct 11.

7. Although the Respondent Judge Bryan has been asked to recuse himself from presiding over the case, he has refused to do so, and has set the trial to commence on Monday, September 23, 2002. (See Tab C, attached).

The only form of relief available to these Petitioners to protect themselves from a serious violation of their rights is to seek in this Court a writ of mandamus to be issued to the Respondent Judge Bryan, requiring him to refrain from

hearing the issues before him, to recuse himself from doing so, and to cause Case No. 99-293 to be transferred from the 5th Judicial Circuit. Alternatively, this Court is asked to require the Respondent Judge Bryan to appear and show cause why such writ should not issue.

Respectfully Submitted,

/s/ Alvin T. Prestwood
ALVIN T. PRESTWOOD (PRE 004)
PRESTWOOD & DICKEY L.L.C.
350 Adams Avenue
Montgomery, AL 36104
Telephone: (334) 264-6401
Facsimile: (334) 834-4954

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing Petition for a Writ of Mandamus upon the following, by causing a copy of the same to be hand-delivered to their respective officers this the 18th day of September, 2002.

Honorable Howard F. Bryan
Circuit Judge
Circuit Court of Chambers County, Alabama
La Fayette, Alabama

Greg Locklier, Esq.
Legal Counsel
Alabama Department of Public Health
P.O. Box 303017
201 Monroe Street
Montgomery, Alabama 36130

Counsel of record for Donald B. Williamson

/s/ Alvin T. Prestwood
ALVIN T. PRESTWOOD

APPENDIX J

September 19, 2002

THE COURT OF CIVIL APPEALS OF ALABAMA

RE: 2011234

Ex parte Stanton Sullivan, et al. PETITION FOR WRIT of MANDAMUS (In re: Southeastern Rubber Recycling, Inc. and Stan Sullivan v. State of Alabama Department of Public Health, et al.) (Chambers County Circuit Court: CV 99-293).

Petition for Writ of Mandamus, having been filed and the same having been submitted and duly examined and understood by the Court,

IT IS ORDERED that the petition be, and the same is hereby DENIED.

Yates, P. J. and Crawley, Thompson and Pittman, JJ, concur.

APPENDIX K

IN THE SUPREME COURT OF ALABAMA

CASE NO. 1012325

In Re: STANTON SULLIVAN, *et al.*

PETITION FOR A WRIT OF MANDAMUS
REGARDING CIVIL ACTION NO CV-99-293
PENDING IN THE CIRCUIT COURT OF
CHAMBERS COUNTY, ALABAMA

ALVIN T. PRESTWOOD
PRESTWOOD & DICKEY L.L.C.
350 Adams Avenue
Post Office Box 1910
Montgomery, Al 36102
Telephone: (334) 264-6401
Facsimile:(334) 834-4954

PETITION FOR A WRIT OF MANDAMUS

Pursuant to Rule 21(a) and (e) of the Alabama Rules of Appellate Procedure, the Petitioners, Stanton Sullivan and Sunrise Garden Mart, Inc., d/b/a Southeast Rubber Recycling ("SRR"), come now and respectfully seek from this Court the issuance of its Writ of Mandamus, directed to the Respondent, Honorable Howard F. Bryan, Circuit Judge of the Circuit Court of Chambers County, requiring him to recuse himself from presiding over any hearings involving the Petitioners in the case of *Southeastern Rubber Recycling Inc.*

and Stan Sullivan, Case No 99-293, now pending in the Circuit Court of Chambers County, Alabama, and to cause said case to be transferred form the Circuit Court of Chambers County for trial. The issues involved are whether this Court will allow a circuit court to proceed to preside over a trial in the face of overwhelming evidence that the Petitioners are likely to be deprived of the benefits of a fair trial.

The facts necessary to understand the petition are as follows:

1. The Petitioners operate a used tire recycling business at two locations in Chambers County, Alabama. Under threat of closure and penalties, the Petitioners sought judicial relief against the Alabama State Department of Public Health in Case No. 99-293.

2. The Respondent Howard F. Bryan is a duly elected judge of the Circuit Court of Chambers County, who was assigned to preside over Case No. 99-293. In the course of the proceedings in Case No. 99-293, the Respondent Judge Bryan has made statements leading the Petitioners to believe that he may have predecided the issues in the case against them.

3. There has been significant newspaper and television publicity in and around the Chambers County area about the Petitioner's facilities, and about the dangers of breeding mosquitoes at said facilities. (*See* Tab A, attached hereto). The Petitioners are informed and believe, and upon such information and belief aver, that a community meeting or meetings have been scheduled and held in Chambers County, aimed at making people fear that mosquitos at the recycling locations pose a threat to the spread of disease commonly referred to as the "West Nile Virus". The Petitioners are informed and believe that counsel for

the Respondents has participated in one or more of such meetings.

4. There is, in reality, no danger of the spread of the disease known as the "West Nile Virus" because of the Petitioners recycling locations. (*See* Tab B, attached).

5. The Respondent, Judge Howard P. Bryan, is an elected official in the judicial circuit encompassing Chambers County, and his ability to continue serving as such depends upon re-election to his office by vote of the public electors. Because of the significant publicity received in and around Chambers County about the case, Judge Bryan will be seen as being subjected by public pressure to rule against these Petitioners. Cases should not be tried in forums and before judges when there is a substantial question about bias, even though no actual bias may exist. The U.S. Supreme Court in *Concrete Pipe and Products of California Inc. v, Construction Laborers Pension Trust*, 508 U.S. 602, 617-18,(1993) said:

"That officers acting in a judicial or quasi-judicial capacity are disqualified by their interest in the controversy to be decided is, of course, the general rule" *Tumey v. Ohio*, 273 U.S. 510, 522, 71 L. Ed. 749, 47 S. Ct. 437, 50 A.L.R. 1243 (1927). Before one may be deprived of a protected interest, whether in a criminal or civil setting, *See Marshall Jerrico. Inc.*, 446 U.S. 238, 242 and n 2, 64 L. Ed. 2d 182, 100 S. Ct. 1610 (1980), one is entitled as a matter of due process of law to an adjudicator who is not in a situation "which would offer a possible temptation to the average man as a judge . . . which might lead him not to hold the balance nice, clear and true. . . " Ward, supra, at 60, (quoting *Tumey* supra, at 532). Even appeal and a trial de novo will not cure a failure to provide a neutral and detached adjudicator.

"[J]ustice", indeed, "must satisfy the appearance of justice, and this stringent rule may sometimes bar trial [even] by judges who have no actual bias and who would do their very best to weight the scales of justice equally between contending parties." *Marshall v. Jerrico, Inc. supra*, at 243."

6. If Case No. 99-293, is allowed to be tried in Chambers County and before Judge Bryan, the obvious public impression will be that the Petitioners were deprived of a "fair trial in a fair tribunal", a basic right guaranteed by due process principles. *See In re Murchison*; 349 U.S.133, 136 (1995) where the court said:

"A fair trial in a fair tribunal is a basic requirement of due process. Fairness of course requires an absence of actual bias in the trial of cases. But our system of law has always endeavored to prevent even the probability of unfairness. To this end no man can be a judge in his own case and no man is permitted to try cases where he has an interest in the outcome. That interest cannot be defined with precision. Circumstances and relationships must be considered. This Court has said, however, that 'every procedure which would offer a possible temptation to the average man as a judge. . . not to hold the balance nice, clear and true between the State and the accused, denies the latter due process of law.' *Tumey v. Ohio*, 273 U.S. 510, 532, 71 L ed 749, 758, 47 S. Ct. 437, 50 ALR 1243. Such a stringent rule may sometimes bar trial by judges who have no actual bias and who would do their very best to weigh the scales of justice equally between contending parties. But to perform its high function in the best way 'justice must satisfy the appearance of justice,' *Offutt v. United States*, 348 US 11, 99 L ed 11, 75 S Ct 11.

7. Although the Respondent Judge Bryan has been asked to recuse himself from presiding over the case, he has

refused to do so, and has set the trial to commence on Monday, September 23, 2002. (*See* Tab C, attached).

8. A similar Petition was filed in the Alabama Court of Civil Appeals on the 18th day of September, 2002, and was denied by that Court on September 19, 2002. A copy of the order of denial is attached hereto marked "Tab D". This Petition therefore follows pursuant to Rule 21 (e).

The only form of relief available to these Petitioners to protect themselves from a serious violation of their rights is to seek in this Court a writ of mandamus to be issued to the Respondent Judge Bryan, requiring him to refrain from hearing the issues before him, to recuse himself from doing so, and to cause Case No. 99-293 to be transferred from the 5th Judicial Circuit. Alternatively, this Court is asked to require the Respondent Judge Bryan to appear and show cause why such writ should not issue.

Respectfully Submitted,

/s/ Alvin T. Prestwood
ALVIN T. PRESTWOOD
PRESTWOOD & DICKEY L.L.C.
350 Adams Avenue
Post Office Box 1910
Montgomery, Al 36102
Telephone: (334) 264-6401
Facsimile:(334) 834-4954

CERTIFICATE OF SERVICE

I hereby certify that t have served a copy of the foregoing Petition for a Writ of Mandamus upon the following, by causing a copy of the same to be hand-delivered to their respective offices this the 20th day of September, 2002.

Honorable Howard F. Bryan
Circuit Judge
Circuit Court of Chambers County, Alabama
La Fayette, Alabama

Greg Locklier, Esq.
Legal Counsel
Alabama Department of Public Health
P.O. Box 303017
201 Monroe Street
Montgomery, Alabama 36130
Counsel of record for Donald B. Williamson

/s/ Alvin T. Prestwood
ALVIN T. PRESTWOOD

APPENDIX L

IN THE SUPREME COURT OF ALABAMA

October 8, 2002

1012325

Ex parte Stanton Sullivan and Sunrise Garden Mart, Inc., d/b/a Southeast Rubber Recycling. PETITION FOR WRIT OF MANDAMUS: CIVIL (In re: Southeastern Rubber Recycling, Inc., and Stan Sullivan v. State of Alabama Department of Public Health et al.) (Chambers Circuit Court: CV-99-293).

ORDER

The petition for writ of mandamus to be directed to the Honorable Howard F. Bryan, IV, Judge of the Circuit Court of Chambers County, Alabama, having been duly filed and submitted to the Court,

IT IS ORDERED that the petition for writ of mandamus is denied.

Moore, C.J., and Houston, See, Lyons, Brown, Harwood, Woodall, and Stuart,

APPENDIX M

§ 22-27-2. Definitions.

For the purpose of this article, the following terms shall have the meanings respectively described to them in this section:

(1) SOLID WASTES. All putrescible and nonputrescible discarded materials, except household sewage and livestock and poultry wastes, including, but not limited to garbage, rubbish, ashes, street and highways cleanings, dead animals, including offal abandoned automobiles and such industrial wastes as are not controlled by other agencies.

(2) GARBAGE. Putrescible animal and vegetable wastes resulting from the handling, preparation, cooking and consumption of food including wastes from markets, storage facilities, handling and sale of produce and other food products and excepting such materials that may be serviced by garbage grinders and handled as household sewage.

(3) ASHES. The solid residue from burning of wood, coal, coke or other combustible material used for heating or from incineration of solid wastes but excepting solid residue, the storage or disposition of which is controlled by other agencies.

(4) RUBBISH. Nonputrescible solid wastes, excluding ashes, consisting of both combustible and noncombustible wastes. Combustible rubbish includes paper, rags, cartons, wood, furniture, rubber, plastics, yard trimmings, leaves and similar materials. Noncombustible rubbish includes glass, crockery, metal cans, metal furniture and like materials which will not burn at ordinary incinerator temperatures, not less than 1600 degrees Fahrenheit.

(5) OPEN DUMP. Any officially recognized place, land or building which seves as a final depository for solid wastes, whether or not burned or burned., which does not meet the

minimum requirements for a sanitary landfill except approved incinerators, compost plants and salvage yards.

(6) UNAUTHORIZED DUMP. Any collection of solid wastes either dumped or caused to be dumped or placed on any property either public or private, whether or not regularly used, and not under the control and supervision of any person or agency. An abandoned automobile, large appliance or similar large item of solid waste shall be considered as forming an unauthorized dump within the meaning of this article, but not the careless littering of smaller individual items as tires, bottles, cans and the like. An unauthorized dump shall also mean any solid waste disposal site which does not meet the regulatory provisions of this article.

(7) SANITARY LANDFILL. A controlled area of land upon which solid waste is deposited and is compacted and covered with compacted earth each day as deposited with no on-site burning of wastes, and so located, contoured and drained that it will not constitute a source of water pollution as determined by the Alabama Department of Environmental Management.

(8) LANDFILL. A method compaction and earth cover of solid wastes other than those containing garbage or other putrescible wastes, including, but not limited to, tree limbs and stumps, demolition materials, incinerator residues and like materials not constituting a health or nuisance hazard, where cover need not be applied on a per day used basis.

(9) HAZARDOUS WASTES. Those wastes defined in the Hazardous Waste Management Act of 1978, as amended (Section 22-30-21 et seq.)

(10) INCINERATOR. A device designed to burn that portion of garbage and rubbish which will be consumed at temperatures generally ranging 1600 degrees Fahrenheit or over. The unburned residue from an incinerator, including metal, glass and the like shall be called ashes.

(11) COMPOSTING OR COMPOST PLANT. An officially controlled method or operation whereby putrescible solid wastes are broken down through micro-bic action to a material offering no hazard or nuisance factors to public health or well-being.

(12) HEALTH DEPARTMENT. An approved county or district health department, including the Alabama State Department of Public Health and the affected state and county boards of health.

(13) HEALTH OFFICER. The state or affected county health officer or his designee.

(14) AGENCY. Any controlling agency, public or private, elected, appointed or volunteer utilizing methods approved by the health department for the purpose of controlling and supervising the collection and/or disposal of solid wastes.

(15) DEPARTMENT. The Alabama Department of Environmental Management.

(16) DIRECTOR. The director of the Alabama Department of Environmental Management.

Code of Alabama 1975

§ 22-27-7. Enforcement of provisions.

With regard to the collection of solid wastes, the Health Department shall exercise such supervision over equipment, methodology and personnel in the management of solid wastes as may be necessary to enforce sanitary requirements, and the state and county boards of health may adopt such rules and regulations as may be needed to specify methodology and procedures to meet the requirements of this article. With regard to the disposal of solid wastes, the department shall exercise such regulatory control over the management of solid wastes as may be necessary to enforce the requirements of the department, and the department may adopt such rules and regulations as may be needed to meet the requirements of this article. Any person violating any provision of this article or any rule or regulation made pursuant to this article shall be guilty of a misdemeanor and, upon conviction, shall be fined not less than $50.00 or more than $200.00, and, if the violation or failure or refusal to obey or comply with such provision of this article or such rule or regulation is a continuing one, each day's violation shall constitute a separate offense and shall be punished accordingly. Any person, firm or corporation granted an exception under subsection (g) of Section 22-27-3 who or which fails to carry out and comply with the provisions of the proposals embodied in the application and plan upon which a certificate of exception was issued to him or it shall be guilty of a misdemeanor and shall be punished as provided in this section. Any person, firm or corporation which has not been issued a certificate of exception under subsection (g) of Section 22-27-3 and which utilizes the solid waste disposal system of any county or municipality and which fails to pay the fee, rate or charge established by the county commission or municipal governing body thereof shall be guilty of a misdemeanor and shall be punished as provided in this

section. All citations to violators of this article shall be served by any lawful officer or by the Solid Waste Officer.

Code of Alabama 1975

§ 6-5-120. Defined.

A "nuisance" is anything that works hurt, inconvenience or damage to another. The fact that the act done may otherwise be lawful does not keep it from being a nuisance. The inconvenience complained of must not be fanciful or such as would affect only one of a fastidious taste, but it should be such as would affect only one of a fastidious taste, but it should be such as would affect an ordinary reasonable man.

§ 6-5-121. Distinction between public and private nuisances; right of action generally.

Nuisances are either public or private. A public nuisance is one which damages all persons who come within the sphere of its operation, though it may vary in its effects on individuals. A private nuisance is one limited in its injurious effects to one or a few individuals. Generally, a public nuisance gives no right of action to any individual, but must be abated by a process instituted in the name of the state. A private nuisance gives a right of action to the person injured.

Code of Alabama 1975

§ 41-22-5. Notice of intent to adopt, amend or repeal rules: submission of data, views. etc., by interested persons; procedure for adoption of emergency rules; effect of this section on other procedural requirements; validity of rules in substantial compliance with this section; limitation of proceedings to contest rules.

(a) Prior to the adoption, amendment, or repeal of any rule, the agency shall:

(1) Give at !east 35 days' notice of its intended action. Date of publication in the Alabama Administrative Monthly

shall constitute the date of notice. The notice shall include a statement of either the terms or substance of the intended action or a description of the subjects and issues involved, shall specify a notice period ending not less than 35 days or more than 90 days from the date of the notice, during which period interested persons may present their views thereon, and shall specify the place where, and the manner in which interested persons may present their views thereon. The notice shall be given to the chairman of the legislative committee, as provided in Section 41-22-23, and mailed to all persons who pay the cost of such mailing and who have made timely request of the agency for advance notice of its rulemaking proceedings and shall be published, prior to any action thereon, in the Alabama Administrative Monthly. A complete copy of the proposed rule shall be filed with the secretary of the agency and the Legislative Reference Service.

(2) Afford all interested persons reasonable opportunity to submit data, views, or arguments orally or in writing. The agency shall consider fully all written and oral submissions respecting the proposed rule. Upon adoption of a rule, the agency, if conflicting views are submitted on the proposed rule shall issue a concise statement of the principal reasons for and against its adoption incorporating therein its reasons for and against its adoption, incorporating therein its reasons for overruling any considerations urged against its adoption.

(b) Notwithstanding any other provision of this chapter to the contrary, if an agency finds that an immediate danger to the public health, safety, or welfare requires adoption of a rule upon fewer than 35 days' notice or that action is required by or to comply with a federal statute or regulation which requires adoption of a rule upon server than 35 days' notice and states in writing its reasons for that finding, it may proceed without prior notice or hearing or upon any abbreviated notice and hearing that it finds practicable, to adopt an emergency rule. The rule shall become effective

immediately, unless otherwise stated therein, upon the filing of the rule and a copy of the written statement of the reasons therefore with the Legislative Reference Service and the secretary of the agency. The rule may be effective for a period of not longer than 120 days and shall not be renewable. An agency shall not adopt the same or a substantially similar emergency rule within one calendar year from its first adoption unless the agency clearly establishes it could not reasonably be foreseen during the initial 120–day period that such emergency would continue or would likely reoccur during the next nine months. The adoption of the same or a substantially similar rule by normal rulemaking procedures is not precluded. In any subsequent action contesting the effective date of a rule adopted pursuant to this subsection, the burden of proof shall be on the agency to justify its finding. Prior to indexing and publication, the agency shall make reasonable efforts to apprise the persons who may be affected by its rules of the adoption of the emergency rule.

(c) It is the intent of this section to establish basic minimum procedural requirements for the adoption, amendment, or repeal of administrative rules. Except for emergency rules which are provided for in subsection (b) of this section, the provisions of this section are applicable to the exercise of any rulemaking authority conferred by any statute, but nothing in this section repeals or diminishes additional requirements imposed by law or diminishes or repeals any summary power granted by law to the state or any agency thereof.

(d) No rule adopted after October 1, 1982, is valid unless adopted in substantial compliance with this section. A proceeding to contest any rule on the ground of noncompliance with the procedural requirements of this section must be commenced within two years from the effective date of the rule; provided, however, that a proceeding to contest a rule based on failure to provide notice as herein required may be commenced at any time.

Code of Alabama 1975

§ 41-22-9. Adoption by reference of codes, standards, and regulations and other agencies of this state or the United States or of other approved organizations; form of reference; availability from agency of information as to rules, etc., adopted by reference.

An agency may adopt, by reference in its rules and without publishing the adopted matter in full, all or any part of a code, standard or regulation which has been adopted by any other agency of this state or any agency of the United States or by a generally recognized organization or association approved by the joint committee administrative regulation review. The reference shall fully identify the adopted matter by date and otherwise. The agency shall have available copies of the adopted matter for inspection and the rules shall state where copies of the adopted matter can be obtained and any charge therefore as of the time the rule is adopted.

SCRAP TIRE DISPOSAL

Code of Ala. 1975

§ 22-40-1. Definitions.

For the purposes of this chapter, the following terms shall have the following meanings:

(1) COMMISSION. The Scrap Tire Study Commission created under Section 22-40-10.

(2) COUNTY ENFORCEMENT OFFICER. The person appointed by the county commission of each county to enforce this chapter, and any deputy enforcement officers enforcing this chapter under the supervision of the county enforcement officer.

(3) FLEET TIRE RECEIVER. Any person, company, corporation or governmental entity who, in the regular course of business meets all of the following:

(i) Owns and operates a fleet of vehicles for business purposes; (ii) on business premises or on business-owned property, conducts the repair and maintenance, including the repair or replacement of tires on fleet vehicles or vehicles owned by a person or company that is related through corporate affiliation or employment; and (iii) transports scrap tires received by the person, company, corporation, or governmental entity to scrap tire collection facility.

(4) GOVERNMENTAL ENTITY. The State of Alabama, any incorporated municipality in Alabama, and any county in Alabama, and any department, agency, board or commission of the state, any municipality, or county, including school boards, and any public corporations identified by statute as providing a governmental function.

(5) INNOCENT LANDOWNER. Any person, company, corporation, or governmental entity holding an interest in real property upon which scrap tires are discarded illegally or without specific permission from the holder of the real property interest.

(6) PERSONAL USE DISPOSER. Any individual, business, or agricultural enterprise disposing of scrap tires removed from a vehicle owned and used by that individual, business, or agricultural enterprise. Any individual, business, or agricultural enterprise who in a 12-month period disposes of more than one-tire per rim for each vehicle registered to that individual, business, or agricultural enterprises is not a personal use disposer under this chapter.

(7) PROPERLY PERMITTED. A scrap tire collection facility that is operating in compliance with the rules and regulations issued by the Alabama Department of Public Health or the Alabama Department of Environmental Management, or both

departments, and that has been issued and maintains any operating permits required by law or regulation.

(8) RETREAD OR RETREADED TIRE. A used tire casing which has been removed from the rim of a vehicle and which has or will receive a new covering of tread for reuse or resale.

(9) SCRAP TIRE. A tire that is not on the wheel of a vehicle and is no longer suitable for its original intended use due to wear, damage, defect, or deviation from the manufacturer's specifications, but shall not include a tire for retreading and recapping.

(10) SCRAP TIRE COLLECTION FACILITY. Any person, company, or corporation that receives or collects, or both, scrap tires at a facility set up for the disposal of such tires, including any landfills that accept scrap tires, through storage, reuse, recycling, or otherwise pursuant to and under any rules and regulations which are or may be promulgated by the Alabama Department of Public Health, the Alabama Department of Environmental Management, or the laws of this state, and any facility receiving tires for the purpose of utilizing tire-derived fuel.

(11) SCRAP TIRE LICENSE. A license issued pursuant to this chapter.

(12) SCRAP TIRE RECEIVER. Any person, company, or corporation, who in regular course of business receives, as a trade-in otherwise, scrap tires. A scrape tire receiver shall include, but not be limited to, any person, company, or corporation engaged in the business of selling, receiving, or distributing new or used tires in the State of Alabama, whether at retail or wholesale, and whether or not the sale or distribution of tires is the principal purpose of the business; and any person, company, or corporation engaged in the repair or servicing of vehicles which offers as one of its services, the sale, installation, or replacement of new or used tires. A scrap tire receiver shall not include a fleet tire receiver.

(13) SCRAP TIRE TRANSPORTER. Any person, company, or corporation, who in the regular course of business, collects or receives, or both, scrap tires for transportation and delivery to a scrap tire collection facility, but not including any fleet tire receiver.

(14) VIOLATION. A violation of this chapter shall include any of the following actions or circumstances:

a. The failure to obtain a scrap tire license where required by this chapter.

b. The failure to properly display the scrap tire license or to present the license upon request as required by this chapter.

c. The disposal or attempted disposal of scrap tires in a manner other than that prescribed by this chapter.

d. The attempted transfer or disposal of scrap tires as a personal use disposer, fleet tire receiver, or innocent landowner where the individual or business transferring or disposing of scrap tires does not meet the definition of a personal use disposer, fleet tire receiver, or innocent landowner.

e. The transfer or attempted transfer of scrap tires in a manner other than that prescribed by this chapter.

f. The failure to properly maintain scrap tire records or the failure to make the scrap tire records available to the county enforcement officer as prescribed by this chapter.

g. The improper addition to or removal or theft of tires from a fleet tire receiver, scrap tire receiver, scrap tire transporter, or scrap tire collection facility.

Code of Ala. 1975

§ 22-40-2. Scrap tire license—Generally.

(a) In addition to any other licenses required under the laws of this state, all scrap tire receivers and all scrap tire

collection facilities doing business in this state shall annually obtain a scrap tire license in each county in which the business is located or operates. Any business with more than one location within a county shall maintain a separate license for each location. The fee for each annual scrap tire license issued to any scrap tire receiver or scrap tire collection facility in a county shall be twenty-five dollars ($25) per year. Except as otherwise provided in this chapter, the procedures for purchasing such license shall be as set out in Article 1 of Chapter 12, Title 40.

(b) All scrap tire transporters doing business in the State of Alabama, whether or not the business is physically located in the state, shall be required to obtain an annual license. The license shall be issued in the county of the scrap tire transporter's principal place of business, but shall authorize the statewide collection and transportation of scrap tires. A scrap tire transporter whose principal place of business is outside of Alabama shall purchase his or her license in one of the counties in Alabama where he or she regularly collects or disposes of scrap tires. Each company vehicle used for the transportation of scrap tires within the state shall display a scrap tire license decal, which shall be displayed in the windshield at all times, whether the decal is affixed or not. Additionally, a copy of the license shall be kept inside the vehicle at all times. The fee for an annual license for a vehicle transporting scrap tires shall be twenty-five dollars ($25) per year; however, if a scrap tire transporter business has more than one vehicle transporting scrap tires, it shall be assessed one dollar ($1) per vehicle for the cost of each additional decal. Except as otherwise provided in this chapter, the procedures for purchasing such license shall be as set out in Article I of Chapter 12. Title 40.

(c) Except for governmental entities, all fleet tire receivers doing business in the State of Alabama shall annually obtain a scrap tire license in the county of incorporation, the principal

place of business in Alabama, or the principal place of fleet operations. The license shall be two hundred fifty dollars ($250) annually, and shall be valid in each business location within the state where fleet operations are conducted, provided a copy of the license is made available at each location. Except as other-wise provided in this chapter, the procedures for purchasing such license shall be as set out in Article 1 of Chapter 12, Title 40.

(d) All governmental entities shall be exempt from the licensure requirements of this chapter, but shall be required to comply with all other provisions of this chapter, including the record-keeping provisions for fleet tire receivers, scrap tire receivers, transporters, and collection facilities.

(e) A personal use disposer or innocent landowner shall not be required to obtain a scrap tire license, but shall be required to comply with all provisions of this chapter regarding the receipt, transportation, and disposal of scrap tires.

(f) Beginning with the license year following September 28, 2001, any person or business engaged in more than one activity requiring a scrap tire license under this chapter shall only be required to purchase one license for each location; provided, however, that the license shall state each activity in which the person or business is involved.

(g) The application for any scrap tire license shall be on a form prescribed by the Commissioner of the Department of Revenue, and shall include, at a minimum, all of the following information:

(1) The business name or names under which the business operates.

(2) The address and telephone number where the principal place of business or home office is located.

(3) The address and telephone number of each business location within the county, or if the application is for a fleet tire receiver license, each location where fleet operations are conducted.

(4) The business location where scrap tire records will be maintained and available to the county enforcement officer and the name or title of the employee to contact regarding such records.

(5) A description of the business purpose, particularly as it relates to the acquisition, collection, or disposal of scrap tires.

(6) If the license is for a scrap tire collection facility, a copy of any operating permit required by the Department of Public Health or the Department of Environmental Management, or by both departments.

(h) Prior to making application for a scrap tire license, all scrap tire transporters and scrap tire collection facilities shall post bond payable to the State of Alabama in an amount to be set by the Alabama Department of Public Health but not less than ten thousand dollars ($10,000). Proof of the bond shall be presented at the time of application for a scrap tire license. Each scrap tire license shall identify the category of business or businesses for which the license is issued.

(i) Except as otherwise provided in Section 22-40-8, the provisions of Article 1 of Chapter 12, Title 40, regarding the collection and distribution of license fees and delinquent charges shall be applicable; provided, however, that all fees and penalties paid into the county general fund shall be deposited into a special fund to be used as determined by the county commission for the administration and enforcement of this chapter. The fees and penalties paid to the state shall be continually appropriated and paid over to the Alabama Department of Public Health to be expended only for the administration and enforcement of this chapter, for scrap tire

remediation, or for any expenses associated with the commission. All expenditures of funds appropriated to the state shall be made pursuant to guidelines established by the commission during its existence and thereafter as determined by the Alabama Department of Public Health. The official issuing the license shall forward a copy of the license to the county health department and the county enforcement officer within 10 days of issuance.

(j) Within 30 days of June 19, 1999, the licensing official in each county shall post notice of the effective date of the licensing requirements in a conspicuous place in the office where business licenses are purchased. The notice shall advise that all businesses collecting, receiving, or disposing of scrap tires shall be required to obtain a scrap tire license beginning October 1, 1999. The county health officer and the Alabama Department of Environmental Management shall post a similar notice in a public location in all state and county officers.

Code of Ala. 1975

§ 22-40-3. Scrap tire license—Display; decal

All scrap tire receivers and scrap tire collection facilities shall conspicuously display the scrap tire license in each business location at all times. Each scrap tire transporter shall display a valid scrap tire license decal, whether or not affixed, in the vehicle's windshield and shall at all times keep the license or a copy of the license in the vehicle. The decal shall be prima facie evidence that the transporter has a valid scrap tire license. However, upon request, the transporter shall present the actual license for inspection to a fleet tire receiver, innocent landowner, scrap tire receiver, a scrap tire collection facility, or the county enforcement officer for any county in this state.

Code of Ala. 1975

§ 22-40-4. Disposal of scrap tires.

(a) On and after January 1, 2000. all scrap tires disposed of in the state, including the scrap tires of a personal use disposer, fleet tire receiver, innocent landowner, or any governmental entity, shall be disposed of by deposit at a properly permitted scrap tire collection facility licensed pursuant to this chapter. Any person or business found disposing of scrap tires in a manner other than as prescribed in this chapter; any person or business other than a personal use disposer or innocent landowner found receiving or collecting scrap tires at an unlicensed location; and any person found adding or removing scrap tires from a fleet tire receiver, scrap tire receiver, scrap tire transporter, or scrap tire collection facility without the specific permission from the fleet tire receiver, scrap tire receiver, scrap tire transporter, or scrap tire collection facility shall be subject to the fines and penalties set out in section 22-40-8

(b) A fleet tire receiver, scrap tire receiver, innocent landowner, or personal use disposer shall only release scrap tires to a licensed scrap tire transporter; provided, however, that the fleet tire receiver, scrap tire receiver; innocent landowner, or personal use disposer, or an employee or agent thereof, may personally transport scrap tires to a licensed and properly permitted scrap tire collection facility. The scrap tire receiver may charge its customers a scrap tire disposal fee. The fee shall only be assessed against persons actually depositing tires with a scrap tire receiver for proper disposal pursuant to this chapter. The fleet tire receiver, scrap tire receiver, innocent landowner, or personal use disposer may require all scrap tire transporters to produce a valid scrap tire license and shall not release any tires to a transporter unless the vehicle used for transporting the tires is displaying a valid scrap tire license decal. A fleet tire receiver, scrap tire receiver, or innocent landowner or his or her employee or agent who

personally delivers scrap tires to a licensed and properly permitted scrap tire collection facility shall require the scrap tire collection facility to produce a valid scrap tire license, and shall not deposit any scrap tires at the facility unless a valid scrap tire license is presented.

(c) A scrap tire transporter shall only accept scrap tires from a licensed scrap tire receiver or a licensed fleet tire receiver, except that a transporter may accept tires from a personal use disposer, innocent landowner, or from a governmental entity. All scrap tire transporters shall only deposit scrap tires to a licensed and properly permitted scrap tire collection facility. The scrap tire transporter shall require the scrap tire collection facility to produce a valid scrap tire license and shall not deposit any tires at a collection facility unless such license is presented.

(d) A licensed and properly permitted scrap tire collection facility may receive tires from any sources.

Code of Ala. 1975

§ 22-40-5. Records—Receivers.

(a) All scrap tire receivers and fleet tire receivers shall maintain scrap tire records, which shall be made available to the country enforcement officer during business hours upon five business days' notice to the employee identified on the scrap tire license application as the contact person regarding scrap tire records. Invoices or shipping papers maintained by the scrap tire receiver or fleet tire receiver shall be sufficient to satisfy the requirement to maintain scrap tire records, provided the invoices or shipping papers include all of the information required in (b) and (c) below. All scrap tire records shall be maintained for a minimum of three years. If the scrap tire receiver obtains scrap tires from an unlicensed person such as a personal use disposer, an innocent landowner, or a governmental entity, the scrap tire receiver shall

record the name of the party delivering tires to the scrap tire receiver and date the tires are received. The scrap tire receiver shall not be required to record the receipt of scrap tires obtained in the regular course of business, such as the receipt of scrap tires from a customer purchasing new tires from the scrap tire receiver.

(b) On any occasion that a scrap tire receiver or fleet tire receiver or his or her employee or agent personally deposits scrap tires at a scrap tire collection facility, that fact shall be so stated in the scrap tire records, along with all of the following information:

(1) The date on which scrap tires were deposited to a scrap tire collection facility.

(2) The name and business address of each scrap tire collection facility where the tires were deposited.

(3) The scrap tire license number of the scrap tire collection facility.

(4) The name and title of the person who actually transported the tires to the scrap tire collection facility.

(5) The approximate number of tires transported to and deposited at the scrap tire collection facility.

(c) On any occasion that a scrap tire receiver or fleet tire receiver releases scrap tires to a licensed scrap tire transporter for deposit at a scrap tire collection facility, that fact shall be so stated in the scrap tire records, along with all of the following information:

(1) The date on which scrap tires were released to the scrap tire transporter.

(2) The approximate number of tires released to a scrap tire transporter.

(3) The name and business address of the scrap tire transporter who received the tires.

(4) The scrap tire license number of the scrap tire transporter receiving the tires.

(5) The name and business address of the scrap tire collection facility where the scrap tire transporter stated the disposal of scrap tires would be made.

Code of Ala. 1975

§ 22-40-6. Records—Transporters.

(a) All scrap tire transporters shall maintain scrap tire records, which shall be made available to the county enforcement officer during business hours upon five business days' notice to the employee identified on the scrap tire license application as the contact person regarding scrap tire records. Invoices or shipping papers maintained by the scrap tire transporter shall be sufficient to satisfy the requirement to maintain scrap tire records, provided the invoices or shipping papers include all of the requisite information listed below. All scrap tire records shall' be maintained for a minimum of three years.

(b) On any occasion that a scrap tire transporter collects tires to be delivered to a collection facility for disposal, that fact shall be so stated in the scrap tire records along with all of the following information:

(1) The date on which tires were collected for transportation.

(2) The approximate number of tires received at each location where tires were collected.

(3) The name, business address, and scrap tire license number of each location where scrap tires were collected.

(4) The date on which the scrap tires were deposited at a licensed scrap tire collection facility and the approximate number of tires deposited on each date.

(5) The name, business address, and scrap tire license number of each scrap tire collection facility where the scrap tires were deposited.

(6) If any scrap tires are delivered to the scrap tire transporter by a personal use disposer, innocent landowner, or a governmental entity, the date receipt, name of person, innocent landowner, or a governmental entity delivering the tires, and the number of tires received from the personal use disposer, innocent landowner, or governmental entity.

Code of Ala. 1975

§ 22-40-7. Records—Collection.

(a) All scrap tire collection facilities located in Alabama shall maintain scrap tire records, which shall be made available to the county enforcement officer during business hours upon five business days' notice to the employee identified on the scrap tire license application as the contact person regarding scrap tire records. Invoices or shipping papers maintained by the facility shall be sufficient to satisfy the requirement to maintain scrap tire records, provided the invoices or shipping papers include all of the requisite information listed below. All scrap tire records shall be maintained for a minimum of three years.

(b) On any occasion that a scrap tire collection facility receives scrap tires for disposal, that fact shall be so stated in the scrap tire records along with all of the following information:

(1) The date that scrap tires were received.

(2) The name, business address, and scrap tire license number of each scrap tire receiver, scrap tire transporter, or fleet tire receiver delivering tires to the collection facility on that date.

(3) The approximate number of tires received from each scrap tire receiver, scrap tire transporter, or fleet tire receiver delivering tires to the collection facility.

(4) The name, address, and vehicle description of each unlicensed party delivering tires to the scrap tire collection facility, including any personal use disposers, innocent landowners, or governmental entities.

(5) The approximate number of scrap tires received from each unlicensed party, including any personal use disposers, innocent landowners, or governmental entities.

Code of Ala. 1975

§ 22-44-8. Law enforcement.

(a) This chapter shall be enforced by the county license inspector, county solid waste officer, county health officer, a deputy sheriff, or other person appointed by the county commission and may also be enforced by any law enforcement officer, county enforcement officer, or any officer or employee of the Department of Revenue pursuant to the laws of this state and the rules and regulations of the department relating to the enforcement of licenses. In the enforcement of this chapter, the county enforcement officer shall have all authority granted to the license inspector pursuant to Section 40-12-10, and in addition, may investigate any and all reported violations of this chapter within the county, and may independently monitor all fleet tire receivers, scrap tire receivers, scrap tire transporters, and scrap tire collection facilities within the county for compliance with this chapter. The county enforcement officer may issue citations using the Uniform Non-Traffic Citation and Complaint as provided under Rule 20 of the Alabama Rules of Judicial Administration. The county enforcement officer in each county shall share information regarding possible violations in another county with the enforcement officer for that county.

(b) The county enforcement officer or other enforcement officer may issue citations for any violation of this chapter, and upon conviction, the violator or violators shall be fined a minimum of three hundred dollars ($300) for each separate violation. The penalty for failure to obtain a license as required by this chapter shall be up to one hundred fifty dollars ($150) as follows:

(1) Failure to comply with the requirements of licensing or proper display of a decal for 35 days or less shall be a twenty-five dollar ($25) penalty.

(2) Failure to comply for more than 35 days shall be a one hundred fifty dollar ($150) penalty.

(c) In addition to the fine assessed under subsection (b), a fine of five dollars ($5) per tire shall be assessed against any party who transfers, transports, stores, or disposes of scrap tires in violation of this chapter, which fee shall be in addition to all other penalties assessed under this chapter or Article 1, Chapter 2, Title 40. Beginning January 1, 2005, any person or business, except innocent landowners as defined in this chapter, shall be subject to the penalties provided in this section for the storage and/or disposal of scrap tires which occurred prior to the effective date of this amendatory act. Any person, or business that would otherwise be subject to the penalties on January 1, 2005, may apply to the Department of Public Health for a one-time waiver, The department may, if the person provides an approved remediation plan, issue a waiver for a period of time as specified by the department in the waiver, Any person convicted of disposing of scrap tires in violation of this chapter shall also be personally and financially responsible for the proper removal of the scrap tires according to this chapter and any rules or regulations promulgated by the Alabama Department of Public Health and the Alabama Department of Environmental Management.

(d) In addition to the fine assessed under subsection (b), a fine of five dollars ($5) per tire shall be assessed against any person found removing scrap tires from or adding scrap tires to a fleet tire receiver, scrap tire receiver, scrap tire transporter, or scrap tire collection facility without the specific permission of the fleet tire receiver, scrap tire receiver, scrap tire transporter, or scrap tire collection facility.

(e) Individuals and entities that were found in violation of the separate five hundred dollar ($500) penalty previously imposed pursuant to subsection (b) prior to the effective date of this amendatory act, and who paid the penalty under subsection (b) prior to the effective date of this amendatory act, shall, within 60 days of the effective date of this amendatory act, be reimbursed for such penalties, The reimbursement shall be made from the respective funds into which the penalties were paid upon written request to the Licensing Division of the Alabama Department of Revenue, by those individuals and entities who paid said penalties.

Code of Ala. 1975

§ 22-40-9. Distribution of funds.

The fines and penalties collected under Section 22-40-8 shall be continually appropriated and distributed as follows:

(1) One-half of all monies collected within a county shall be appropriated and paid over to the Alabama Department of Public Health for the administration and enforcement of this chapter, for the remediation of scrap tires, and for any expenses associated with the commission, with all funds expended pursuant to guidelines established by the commission during its existence and as thereafter determined by the Alabama Department of Public Health.

(2) One-half of all monies collected within a county shall be retained by that county and deposited into the special fund authorized pursuant to Section 22-40-2 to be used as

determined by the county commission for the administration and enforcement of this chapter.

Code of Ala. 1975

§ 22-40-10. Scrap Tire Study Commission

(a) There is created continuing Scrap Tire Study Commission comprised of the following persons:

(1) A representative from the Alabama Department of Public Health appointed by the State Health Officer.

(2) A representative from the Alabama Department of Environment Management appointed by its director:

(3) A representative from the Department of Conservation and Natural Resources appointed by its commissioner.

(4) A representative from the Alabama Department of Economic and Community Affairs appointed by its director.

(5) A representative appointed by the Alabama League of Municipalities.

(6) A representative appointed by the Association of County Commissions of Alabama.

(7) A representative appointed by the Alabama Tire Dealers Association.

(8) A representative appointed by the Scrap Tire Management Council.

(9) A representative appointed by the scrap tire industry appointed by the Governor.

(10) A representative from the recycling industry appointed by the Lieutenant Governor.

(11) A representative from the environmental community appointed by the Speaker of the House.

(12) A representative of fleet tire receivers appointed by the Business Council of Alabama.

(b) The commission shall perform all of the following duties:

(1) Study the problem of existing piles of scrap tires found in Alabama.

(2) Research possible methods for removing existing scrap tire piles.

(3) Develop one or more proposals for the environmentally safe removal of existing scrap tire piles and the prevention of similar problems in the future.

(4) Develop programs to stimulate and encourage the environmentally safe end use of scrap tires.

(5) Establish guidelines for the expenditure of funds generated by this chapter which are appropriated and paid to the state no later than January 1, 2000.

(6) Conduct a survey of appropriate governmental entities and agencies to determine the number and location of existing scrap tire piles in Alabama. The survey shall be completed no later than March 1, 2000.

(7) File a written report to the Alabama Legislature no later than the 10th legislative day of the 2001 Regular Session, with recommendations for addressing the problems associated with the disposal of scrap tires in Alabama.

(c) The first meeting of the commission shall be called by the representative of the Alabama Department of Public Health no later than August 1, 1999, and at that meeting, the members shall elect a chair and any other officers they deem appropriate. The commission shall meet thereafter at the call of the chair. All expenses of the commission shall be paid out of the state's proceeds from the fees and penalties generated under the requirements of this chapter or other funds appropriated for that purpose.

Code of Ala. 1975

§ 22-4-11. Construction and administration of chapter.

It is intended that the provisions of this chapter shall be strictly construed and administered to accomplish the public's health interest in eliminating or significantly reducing the number of improperly discarded scrap tires within the state, and to this end, the provisions of this chapter shall be strictly enforced. Any person or company with information regarding the illegal collection or disposal of scrap tires is strongly encouraged to provide such information to the county enforcement officer to assist in the effective enforcement of the chapter. Anyone providing information regarding violations of this chapter to the county enforcement officer or any law enforcement agency shall be immune from any criminal or civil liability for providing the information or for cooperating in an investigation of any possible violations reported.